HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

W. P. (C) No. 1482 of 2007

Petitioner : Usha Dubey

Versus

Respondents : State of Chhattisgarh and others

Post for order on 22nd March, 2007.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. (C) No. 1482 of 2007

Petitioner		Usha Dubey, Wife of Shri Ramadhin Dubey, Aged about 40 years, Resident of Khova Mandir, Gol Bazar, Bilaspur Chhattisgarh.
	Versus	
Respondents	1.	State of Chhattisgarh, Through Secretary, Department of Home (Police), Mantralaya, D.K.S. Bhawan, Raipur, Chhattisgarh.
	2.	Director General of Police Raipur, Chhatisgarh.
	3.	Superintendent of Police Bilaspur, Chhattisgarh.
	4.	Thana-in-Charge, Police Station Kota, District Bilaspur, Chhattisgarh.
	5.	Director, Forensic Science Laboratory, Tikrapara, Raipur, Chhattisgarh.

SB: Hon'ble Mr. Justice Satish K. Agnihotri, J

Shri Saurabh Dandgi, Advocate for the petitioner.

Shri Utkarsh Verma, Deputy Govt, Advocate for the respondents.

ORDER

(Passed on this 22nd day of March, 2007)

The following order of the Court is passed by **Satish K. Agnihotri, J.**

1. By this petition, field under Article 226 of the Constitution of India, the petitioner seeks a writ in the nature of mandamus directing the respondent No.5 to submit forensic examination report. Further, the respondents be directed to conduct thorough investigation into cause of the death of the daughter of the petitioner and initiate appropriate fresh proceedings.

2. The indisputable facts, in nutshell, are that Mrs. Jyoti Dwivedi, W/o Shri Teekam Prasad Dwivedi was found dead in suspicious circumstances in the house of Shri Teekam Prasad Dwivdi (husband) on 21.1.2005. The marriage between Jyoti and Teekam Prasad Dwivedi took place in

June, 2002. The viscera was sent for F.S.L. on 3.2.2005 by the respondent No.3 to respondent No.5 for forensic examination.

3. In the Sessions Trial No. 118/2005, the First Additional Sessions Judge acquitted the accused namely Teekam Prasad Dwivedi, Smt. Shanti Bai and Smt. Ratnawali (respectively, mother and sister of Teekam Prasad Dwivedi) from the alleged offences punishable under section 498-A and Section 304-B of the Indian penal Code vide judgment and order dated 29.6.2006 (Annexure P/3).

4. Being aggrieved the petitioner filed a Criminal revision No. 698 of 2006 in this Court. This Court vide order dated 7.12.2006 (Annexure P/4) dismissed the revision observing that "Undisputedly report of Forensic Science Laboratory has not been received, but for the purpose of offence under Section 304-B of the IPC unnatural death and soon before death cruelty on the demand of dowry are the essential ingredients, therefore, when unnatural death was not in dispute, the absence of report of FSL, does not adversely affect any of the parties."

5. The petitioner has filed this petition under Article 226 of the Constitution of India, seeking a writ/direction for judicial review of the order dated 7.12.2006 passed by a Division Bench of this Court in Criminal Revision No. 698/2006.

6. The jurisdiction of the High Court under Article 226 of the Constitution of India has been explained in catena of decisions and it is well settled that no writ or a direction can be issued, firstly, against a decision, passed by the High Court; secondly, against the order, which has merged with the judgment and order passed by the High Court. In the present case, a direction to the respondent No.5 to sent viscera report of forensic examination, expeditiously, was already subject matter before the Sessions Judge in Sessions Trial No. 188/2005 and thereafter, before

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this Court in Criminal Revision No.698/2006. Thus, this petition is frivlous and has no basis.

7. Thus, no writ of mandamus, as prayed for, can be issued in the facts and circumstances of the case. The petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur